

Senator Jim Webb
Statement for the Record Regarding the Family Educational Rights and
Privacy Act (FERPA) Amendments of 2008
April 14, 2008

Mr. President, as we approach the anniversary of the Virginia Tech tragedy, I am introducing legislation to implement one of the key recommendations from the Virginia Tech Review Panel that was formed by Governor Tim Kaine to examine some of the issues that arose following the shooting. It is exactly one year this week when a disturbed young man took the lives of 32 students, and faculty, and wounded several others on the campus of Virginia Tech. I commend the Virginia Tech community for pulling through such a difficult time and for the tremendous amount of courage they displayed. I also would like to extend my continuing sympathy to the families of the students and faculty that were directly impacted by the shootings.

On April 19, 2007, three days after the Virginia Tech shooting, Governor Kaine announced the formation of the Virginia Tech Review Panel to perform a review of the horrific events of April 16, 2007. This Panel included individuals with the expertise and autonomy necessary to conduct a comprehensive review. These nationally recognized individuals brought expertise in many areas, including law enforcement, security, governmental management, mental health, emergency care, victims' services, the Virginia court system, and higher education.

The genesis for the legislation that I am introducing today is the report prepared by this panel and released to the public on August 2007. A similar report was prepared for President Bush by the Attorney General and the Secretaries of Health and Human Services and Education in follow-up to meetings with various experts across the country. Both reports documented serious concerns from individuals in various communities throughout Virginia and the nation regarding the treatment of student medical records. One main theme that kept resonating in various communities was concern with the appropriate balance between providing for the safety of our communities, while protecting privacy rights. Too many college administrators are unsure how to balance the right to privacy against public safety, and federal law and regulations are unclear.

This bill simply attempts to clear up the ambiguities that currently exist with respect to the Family Educational Rights and Privacy Act (FERPA) and the extent to which it allows for the sharing of student “education records” in order to protect the health or safety of a student or the general public.

FERPA, written in 1974, was created at a time when schools did not provide the health care services they do today. According to the National Institute of Mental Health, half of all lifetime cases of mental illness begin by age 14. Schools today, whether they are K-12 or a post-secondary institution, have critical student health records in their hands. It is important for Congress to ensure that we provide our school officials, administrators and counselors clear federal guidelines to both protect the privacy and ensure the safety of our students.

My bill attempts to address the concerns raised by school officials, administrators and institutions in interpreting FERPA. If one looks back at the recommendations of the Virginia Tech Review Panel, a key resounding theme is the misinterpretation of federal and state privacy laws.

My bill does three things to amend FERPA so that tragic situations like the one at Virginia Tech are less likely to occur: 1) adds an explicit “safe harbor” provision to make clear that no violation of FERPA occurs if a school official discloses information in a good faith belief that it is necessary to protect the health or safety of the student or the general public; 2) clarifies that FERPA does not prohibit the sharing of student treatment records with off-campus medical providers who are also involved in treating the student; and 3) clarifies the emergency exception in FERPA to emphasize that it requires only a good faith belief that disclosure of student education records will protect against a possible threat to the health or safety of the student or the general public.

Again, this is a straightforward attempt to address several recommendations that were made by the Virginia Tech Review Panel in clarifying the widespread perception that information privacy laws make it difficult to respond effectively to troubled students. It is important for school officials to use their best professional judgment in deciding when to disclose or not disclose information – without fear of violating federal educational privacy laws.

Mr. President, there is widespread agreement that existing law is in need of clarification. In this regard, I note that the Department of Education proposed a set of regulatory amendments on March 24, 2008, in an attempt to clarify and give guidance to university administrations on a variety of issues. I believe that this bill is a more direct and effective way to achieve that desired clarity.

Together with the passage of the Mental Health Parity Act in both the House and Senate and other measures to ensure access to mental health services, my bill will be a good step in addressing this growing issue of mental disorders that is all too common in all communities. I look forward to working with my colleagues in the Senate for quick passage of the Family Educational Rights and Privacy Act Amendments of 2008.

Thank you Mr. President. I ask that my remarks be printed in the Congressional Record in the appropriate place.